

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.12850 of 2006

and

W.P.M.P. No. 14444 of 2006

M.Aruna

.. Petitioner

vs.

Teachers' Recruitment Board  
Rep. by its Member Secretary  
E.V.K. Sampath Maligai  
VI Floor  
DPI Compound  
College Road  
Chennai - 6

.. Respondent

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Mandamus directing the respondent to revise the selection list dated 12.4.2006 and appoint the petitioner as a lecturer in any one of the Government Engineering Colleges or Government Polytechnic and appoint the petitioner to the said post with retrospective effect and provide the backwages and promotion, if any.

For Petitioner

: Mr. R.Karuppan

For Respondent

: Mrs.C.K.Vishnupriya, GA

ORDER

I have heard the arguments of Mr. R. Karuppan, learned counsel appearing for the petitioner and Mrs. C.K. Vishnupriya, learned Government Advocate, representing the respondent and have perused the records.

2. The petitioner belongs to Scheduled Caste community and she has joined the Engineering College and got a degree in B.E. Mechanical Engineering with II Class and M.E. in Industrial Engineering in the year 1999 with a First Class. In the present writ petition, she has sought for a writ of Mandamus directing the respondent to revise the selection list and appoint her as a

Lecturer in any one of the Government Engineering Colleges or Government Polytechnics with retrospective effect and all other backwages. When the petitioner saw the advertisement made by the respondent calling for applications for the post of Lecturer in Government Engineering Colleges and Polytechnics for the year 2005-2006 vide Notification, she had also applied for the same. The said advertisement relates to different subjects including Engineering subjects and the following qualifications have been prescribed for the post of Lecturer.

| Subjects                                              | Qualifications                                                                               |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------|
| ENGLISH, MATHEMATICS, PHYSICS, CHEMISTRY AND COMMERCE | A First class Master's Degree in the appropriate branch of study.                            |
| (For all other Subjects)                              | A First class Bachelor's Degree in the branch of Engineering relating to the post concerned. |

3. The petitioner, knowing fully well the qualification prescribed and that she was not eligible, has filed a writ petition before the Madurai Bench of this Court being W.P. (MD) No. 1570 of 2006 challenging the notification. In that writ petition, in W.P.M.P. (MD) No. 1749 of 2006, it was directed that the petitioner shall be considered for the post if the selection process commenced for filling up the said post. But, however, if the petitioner is selected, her results should be withheld pending final orders in that writ petition. Even when that matter is pending before the Madurai Bench, the present writ petition has been filed with the prayer as stated above.

4. When questioned as to how the petitioner can maintain one writ petition before the Madurai Bench and another petition before the Principal Bench, Mr. R. Karuppan, learned counsel appearing for the petitioner, submitted that they will not proceed with the case pending before the Madurai Bench if this matter is taken up first. Only with that premises, the present writ petition was taken up for final hearing.

5. Mr. R. Karuppan, learned counsel appearing for the petitioner submitted that since the petitioner had secured First Class in the Master's Degree, that should be sufficient for the qualification prescribed and the fact that she has got II Class in B.E. is not relevant since she has got higher qualification. Since the petitioner got 73/190 marks in the written examination, she was called for certificate verification in the Scheduled Caste vacancy on 06.4.2006. It was during the verification, it was found that she does not have the minimum qualification for holding the post. The cut-off marks for Scheduled Caste (General) and Scheduled Caste (Women) were prescribed as 98/190 and 71/190 respectively. The allegation made by the petitioner that in that process, several

others, who were less qualified than the petitioner, were selected, was denied. Since the petitioner lacked the minimum qualification, she was not given the posting order as prayed for. This Court, by an order dated 28.4.2006, directed the respondent to keep one post vacant pending final orders.

6. It is from the records produced by the learned Government Advocate that one K.Anbukkarasi had secured total 104 marks and she was the first candidate in Scheduled Caste (Women) and one P.Vijayalakshmi, who had secured 100 marks, was the second candidate in the vacancy for Scheduled Caste (Women). The third candidate was one S.Jeyabharathi, who had secured 85 marks. The petitioner had only secured a total of 76 marks and her results were withheld. But, there are two other Scheduled Caste (Women) candidates, viz., A.Krishnakumari and A.D. Latha, who have also secured 76 marks. While the total vacancies were 44, 92 candidates were called for Certificate Verification and total selected were 22 + 22

= 44 candidates. Because of the Court order, the petitioner was called for interview and her results were withheld because of lack of minimum qualification. In fact, in all the selections made, the State Government was consistent in holding that in respect of Engineering subjects, First Class in B.E. is a must and only in case of subjects relating to Humanities and Sciences, Master's Degree with First Class in the appropriate branch of teaching course was sought for. Even when the respondent Recruitment Board sought for clarification, the Government had communicated a D.O. Letter dated 04.10.2005 and in paragraph 2 of the said order, it is found as follows:

"As per the existing orders the qualification prescribed for the post of Lecturer in Government Engineering Colleges is a first class Bachelors Degree in the appropriate branch of Engineering/ Technology or first class Masters Degree of study in the case of teaching posts in Humanities and Science."

7. Learned counsel for the petitioner sought to rely upon the notice issued by the All India Council for Technical Education [for short, 'AICTE'] wherein the qualification and experience for the post of Lecturer is stated as follows:

| CADRE    | QUALIFICATION & EXPERIENCE                                                                                                                                                              |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lecturer | First Class Bachelor's degree in the appropriate branch of Engineering / Technology OR First Class Master's Degree in the appropriate branch of Engineering (Engg) / Technology (Tech.) |

8. Following this, AICTE's notification was notified in the Government Gazette dated 22.9.2004 for public information. Based

on this, the learned counsel contends that the Government cannot do something contrary to AICTE and, therefore, the order of the Government is invalid and the petitioner is eligible to hold the said post.

9. An identical contention was raised before this Court in the case relating to S.Arulselvam v. Government of Tamil Nadu and another [W.P. No. 2684 of 2006] wherein this Court, by an order dated 17.02.2006, repelled the said contention and held in paragraph 9 as follows:

Para 9: "Keeping the above in mind, the challenge to clause 5 of the prospectus relating to the educational qualification shall be considered. So far as the fixation of educational qualification is concerned, there cannot be any dispute that the educational qualification must be prescribed in conformity with the educational qualifications prescribed in the All India Council for Technical Education Act. The notification relied upon by Mr. K.M. Ramesh, the learned counsel for the petitioner stipulates a First Class Bachelor's Degree in the appropriate branch of engineering / technology or a First Class Master's Degree in the appropriate branch of engineering / technology. Regulations relating to the educational qualification, among other norms, must be made by the All India Council for Technical Education in terms of Section 10(1)(i) of the All India Council for Technical Education Act. Learned counsel for the petitioner relied upon Table E-I of Appendix- E relating to the Minimum Qualification and Experience prescribed for Teaching Post in Degree Level Technical Institutions relating to the Engineering and Technology disciplines. In this regard, a notification was issued by AICTE for revision of pay scales and service conditions and the same are only in the form of guidelines and it cannot be construed to be the Regulations made under Section 10(1)(i) of the Act. Moreover, as per the said guidelines, the qualification prescribed is a First Class Bachelor's Degree in the appropriate branch of engineering / technology or aa First Class Master's Degree in the appropriate branch of engineering / technology. Even if the said guideline is applied, it is for the respondents to prescribe the educational qualification either by stipulating a First Class Bachelor's Degree in the appropriate branch of engineering / technology or in the alternative, a First Class Master's Degree in the appropriate branch of engineering / technology. When such a discretion is vested, it cannot be contended that prescription of a First Class Bachelor's Degree for the post of

Lecturers in the engineering subjects would be contrary to the educational qualification prescribed by the All India Council for Technical Education. It is further contended that inasmuch as the educational qualification relating to English, Mathematics, Physics, Chemistry and Commerce subjects requires a First Class Master's Degree, prescription of only a First Class Bachelor's Degree for engineering subjects would be discriminatory, arbitrary and unreasonable. This argument is also based on misreading of the rules relating to the educational qualification, framed both under Article 309 of the Constitution of India as well as notified by the All India Council for Technical Education. As per the qualification prescribed by the All India Council for Technical Education inasmuch as a First Class Master's Degree in the appropriate branch of engineering, the said prescription is only optional. Secondly, as per the rules framed under Article 309 of the Constitution of India, again it contemplates the educational qualification for the post of Lecturers as a First Class Bachelor's Degree in the appropriate branch of engineering / technology or a First Class Master's Degree in the appropriate branch of study in the case of teaching posts in Humanities and Science. The word "or" has to be read as optional and is not in addition to the First Class Bachelor's Degree. In my opinion, clause 5 of the prospectus relating to the qualification has been prescribed in conformity with the rules framed under Article 309 of the Constitution of India. So long as the rules are not questioned, this Court cannot hold that the impugned clause in the prospectus is either arbitrary, unreasonable and discriminatory."

10. Therefore, the arguments advanced by the learned counsel for the petitioner is misconceived and devoid of merits. Accordingly, the writ petition is dismissed. Interim order already granted by this Court will stand vacated. Connected Miscellaneous Petition is closed.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gri

To

Member Secretary  
Teachers' Recruitment Board  
E.V.K. Sampath Maligai,  
IV Floor, DPI Compound  
College Road  
Chennai - 6

1 cc to Mr.R. Karuppan, Advocate, Sr. 70216

W.P. No.12850 of 2006

RS (CO)  
kk 3/12



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